

## U.S. Patent and Trademark Office, Commerce

## §41.2

EFFECTIVE DATE NOTE: At 73 FR 32972, June 10, 2008, the authority citation for Part 41 was revised, effective December 10, 2008. Per a subsequent final rule published at 73 FR 74972, Dec. 10, 2008, the effective date of this action was delayed indefinitely.

For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 132, 133, 134, 135, 306, and 315.

SOURCE: 69 FR 50003, Aug. 12, 2004, unless otherwise noted.

### Subpart A—General Provisions

#### §41.1 Policy.

(a) *Scope*. Part 41 governs proceedings before the Board of Patent Appeals and Interferences. Sections 1.1 to 1.36 and 1.181 to 1.183 of this title also apply to practice before the Board, as do other sections of part 1 of this title that are incorporated by reference into part 41.

(b) *Construction*. The provisions of Part 41 shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding before the Board.

(c) *Decorum*. Each party must act with courtesy and decorum in all proceedings before the Board, including interactions with other parties.

#### §41.2 Definitions.

Unless otherwise clear from the context, the following definitions apply to proceedings under this part:

*Affidavit* means affidavit, declaration under §1.68 of this title, or statutory declaration under 28 U.S.C. 1746. A transcript of an *ex parte* deposition may be used as an affidavit in a contested case.

*Board* means the Board of Patent Appeals and Interferences and includes:

(1) For a final Board action:

(i) In an appeal or contested case, a panel of the Board.

(ii) In a proceeding under §41.3, the Chief Administrative Patent Judge or another official acting under an express delegation from the Chief Administrative Patent Judge.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

*Board member* means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,

the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges.

*Contested case* means a Board proceeding other than an appeal under 35 U.S.C. 134 or a petition under §41.3. An appeal in an *inter partes* reexamination is not a contested case.

*Final* means, with regard to a Board action, final for the purposes of judicial review. A decision is final only if:

(1) *In a panel proceeding*. The decision is rendered by a panel, disposes of all issues with regard to the party seeking judicial review, and does not indicate that further action is required; and

(2) *In other proceedings*. The decision disposes of all issues or the decision states it is final.

*Hearing* means consideration of the issues of record. *Rehearing* means reconsideration.

*Office* means United States Patent and Trademark Office.

*Panel* means at least three Board members acting in a panel proceeding.

*Panel proceeding* means a proceeding in which final action is reserved by statute to at least three Board members, but includes a non-final portion of such a proceeding whether administered by a panel or not.

*Party*, in this part, means any entity participating in a Board proceeding, other than officers and employees of the Office, including:

(1) An appellant;

(2) A participant in a contested case;

(3) A petitioner; and

(4) Counsel for any of the above, where context permits.

EFFECTIVE DATE NOTE: At 73 FR 32972, June 10, 2008, §41.2 was amended by revising the definitions of “Board” and “Contested case”, effective December 10, 2008. Per a subsequent final rule published at 73 FR 74972, Dec. 10, 2008, the effective date of this action was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

#### §41.2 Definitions.

\* \* \* \* \*

*Board* means the Board of Patent Appeals and Interferences and includes:

### § 41.3

(1) For a final Board action in an appeal or contested case, a panel of the Board.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

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*Contested case* means a Board proceeding other than an appeal under 35 U.S.C. 134. An appeal in an *inter partes* reexamination proceeding is not a contested case.

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### § 41.3 Petitions.

(a) *Deciding official*. Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope*. This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

(1) Issues committed by statute to a panel, and

(2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

(c) *Petition fee*. The fee set in § 41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.

(d) *Effect on proceeding*. The filing of a petition does not stay the time for any other action in a Board proceeding.

(e) *Time for action*. (1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

(i) File the petition within 14 days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

(2) A party may not file an opposition or a reply to a petition without Board authorization.

[69 FR 50003, Aug. 12, 2004, as amended at 69 FR 58260, Sept. 30, 2004]

### 37 CFR Ch. I (7–1–10 Edition)

EFFECTIVE DATE NOTE: At 73 FR 32973, June 10, 2008, § 41.3 was amended by revising paragraphs (a) and (b), effective December 10, 2008. Per a subsequent final rule published at 73 FR 74972, Dec. 10, 2008, the effective date of this action was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

### § 41.3 Petitions.

(a) *Deciding official*. A petition authorized by this part must be addressed to the Chief Administrative Patent Judge. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope*. This section covers petitions on matters pending before the Board, petitions authorized by this part and petitions seeking relief under 35 U.S.C. 135(c); otherwise see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

(1) Issues committed by statute to a panel.

(2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

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### § 41.4 Timeliness.

(a) *Extensions of time*. Extensions of time will be granted only on a showing of good cause except as otherwise provided by rule.

(b) *Late filings*. (1) A late filing that results in either an application becoming abandoned or a reexamination prosecution becoming terminated under § 1.550(d) or § 1.957(b) of this title or limited under § 1.957(c) of this title may be revived as set forth in § 1.137 of this title.

(2) A late filing that does not result in either an application becoming abandoned or a reexamination prosecution becoming terminated under § 1.550(d) or § 1.957(b) of this title or limited under § 1.957(c) of this title will be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interest of justice.

(c) *Scope*. This section governs all proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction, such as:

(1) Extensions during prosecution (see § 1.136 of this title),

(2) Filing of a brief or request for oral hearing (see §§ 41.37, 41.41, 41.47, 41.67, 41.68, 41.71 and 41.73), or